IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 20.01.2005

Coram

The Honourable Mr. Justice V. KANAGARAJ
and
The Honourable Mr. Justice S. SARDAR ZACKRIA HUSSAIN

W.A. Nos.750 to 753 of 1998
and
C.M.P. Nos.7846 to 7849 of 1998

United India Insurance
Company Limited ... Appellant in W.A. No.
24,whites Road,
Madras-14 750 of 1998

National Insurance Co.Ltd. ... Appellant in W.A. No.
Hamid Buildings,
190,Anna salai,
Madras-108 751 of 1998

Oriental Insurance Co.Ltd. ... Appellant in W.A. No.
Uil Building No.8 752 of 1998
Esplanade,Madras-108

New India Assurance Co.Ltd. ... Appellant in W.A. No.
770,Anna Salai, 753 of 1998
Madras-2

Vs.

Secretary,
Tamil Nadu Labour Welfare Board,
DMS Compound, Madras - 6. ... Respondent in writ appeals

Appeals under Clause 15 of the Letters Patent against the order dated 7.11.1996 in W.P. Nos.2900, 2902, 8498 and 2901 of 1987.

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For Appellants: Mr. R.Krishnamurthi,Sr.counsel for
M/s Aiyar & Dolia

For Respondent : Mrs. G. Devi

COMMON JUDGMENT

The above writ appeals have been filed praying to set aside the order of the learned Single Judge dated 7.11.1996 made in W.P. Nos.2900, 2902, 8498 and 2901 of 1987.

2. On a perusal of the materials placed on record, what comes to be known is that the appellants/petitioners have filed W.P. Nos.2900, 2902, 8498 and 2901 of 1987 for quashing the demand for payment of contribution under the Tamil Nadu Labour Welfare Fund Act, 1972 and to direct the respondent to forbear from making any demand under Section 2 of the said Act. Learned Single Judge, after considering all the relevant facts and circumstances of the case, dismissed the writ petitions with costs, holding that the Insurance Companies are not establishments of the Central Government and hence they are liable to pay contribution under the Tamil Nadu Labour Welfare Fund Act, 1972. As against the said order, the above writ appeals are filed.

3. The case of the appellants is that Government Companies are registered under the Indian Companies Act, 1956; that they are subsidiaries of the General Insurance Corporation of India formed in pursuance of Section 9 of the General Insurance Business Nationalization Act, 1972; that under Section 16 of the said Act, the Union of India has framed schemes for running the business of the Company; that the schemes framed under Section 16 of the Act have the force of law, as they are placed on the table of the Parliament as per Section 17 of the Act; that Corporation and Company are created by the directions of the Central Government under Section 23 of the Act; that the Company is fully held and controlled by the Central Government; that it is held to be a State under Article 12 of the Constitution of India by the decisions of the Court; that the Companies are establishments of the Central Government and the Insurance Companies are controlled by the Central Government, but the respondent has been demanding payment of contribution for the period from 1972; in spite of several discussions and correspondences held

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and hence the petitioners/appellants filed the writ petitions, which were dismissed by the learned Single Judge.

4. During arguments, the learned counsel for the appellants/petitioners would submit that the provisions of the Tamil Nadu Act, 1972 has no application to the writ appellants Companies; that the appellant-Companies are incorporated in terms of the provisions of the Indian Companies Act, 1956; that the various insurance Companies were taken over by the Act; that the General Insurance Corporation of India formed in terms of Section 9 of the Central Act is also a company, which has power to supervise, control and carry on the business of general insurance; that the subject of insurance is referable to Entry 47 of List I of VII Schedule; that the nature of business carried on by the Companies is to insure the life of medi-claim, carriers, fire accident etc., that the Tamil Nadu Labour Welfare Fund Act, 1972 (hereinafter referred to as "the Act, 1972) was enacted for promoting the welfare of labour in the State of Tamil Nadu only; that the Tamil Nadu Act is referable to Entry 24 List 3 (concurrent list) of Schedule VII under the head of "labour welfare" and that the Central Act, 1972 empowers the competent authorities therein to frame various schemes including labour welfare scheme.

5. Learned counsel for the appellants would further submit that a bare reading of Section 2(d) of the Act, 1972 would go to show that it is an exhaustive one, but not illustrative; that none of the sub section contained in Section 2(d)(i) to (v) of the Act, 1972 speaks of any company, which is a legal entity in the eye of law; that admittedly, there is no notification of the Government including the Insurance Company as an establishment as envisaged in Section 2(d)(vi) of the Act, 1972; that the provisions of the Act, 1972 cannot be made applicable to the writ appellants, in view of the fact that the Central Act, 1972 provides for such welfare scheme, which, in fact, framed necessary schemes; that the contra finding of the learned Judge is opposed to the settled principles of law that the State Act cannot override the provisions of the Central Act, particularly, when the subject "insurance" is referable to Entry 47 of List I to VII Schedule and hence would seek to allow the writ appeals setting aside the common order of learned single Judge.

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6. Per contra, learned counsel for the respondent would submit that the petitioner/appellant is challenging the contribution on the ground that the appellant-establishments would fall under the category of establishments under Central Government; that Section 2(d)(v) of the Act, 1972 excludes an establishment of Central or any State Government; that Section 2(d)(v) of the Act, 1972 will take the petitioner's establishment and hence the appellant-Companies are bound to contribute to the labour welfare fund; that this Court took the view that a Nationalized Bank would be an establishment under the Central Government; that under the provisions of the Act 1972, the exclusion is only with regard to an establishment of the Central or State Government and it does not include an establishment under the Central Government; that this distinction is vital and significant for appreciating the legal contentions raised by the appellants; that the exemption clause under the Act is wider in scope than the exclusion clause in the Act, 1972; that the Act would not apply on the basis of the judgment rendered under the Shops and Establishments Act, 1947 which is not tenable; that when the same question arose in The State Electricity Board Vs. Govindarajulu (AIR 1960 MADRAS 571), this Court took the view that the Electricity Board, even though a legal person in the eye of law would be distinct from and independent of the Government and hence they cannot avail themselves of the extended provisions of limitation of sixty years provided under Article 149 of the Limitation Act, 1908; that inasmuch as the appellants are not establishments of the Central Government, the appellants would come within the purview of the Act and hence the appellants are bound to contribute the fund; that so long as the appellants have not obtained any exemption under Section 40 of the Act, the appellants are bound to contribute and hence pray for dismissal of the writ appeals.

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7. In consideration of the facts pleaded having regard to the materials placed on record and upon hearing the learned senior counsel appearing on behalf of the appellants in all the above four writ appeals and the Government Pleader contra representing the respondents, what this court could assess is that all the appellants herein are insurance Companies and they have come forward to prefer the above writ appeals four in number, as against the common order passed by

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the learned single Judge of this court in four writ petitions independently filed before it by these appellants but with similar pleadings and prayer to the effect of issuing a writ of certiorarified mandamus calling for the records regarding the demand notices respectively dated 4.2.1987, 26.2.1987, 16.6.1987 and 26.7.1985 issued by the respondent Board demanding the payment of contribution under 'The Tamil Nadu Labour Welfare Fund Act, 1972,' quashing the same and directing the respondent to forbear making such demands of contribution under Section 2(d)(vi) of the The Tamil Nadu Labour Welfare Fund Act, 1972.

8. The learned single Judge having heard the appellants and the respondent as well in full and in appreciation of the facts and circumstances encircling the whole affair connected to the subject, and in application of the law on the subject has ultimately dismissed all the writ petitions with costs holding thereby that the Insurance Companies (the appellants herein) are not the establishments of the Central Government and hence they are liable to pay the contribution under The Tamil Nadu Labour Welfare Fund Act, 1972 and it is this common order passed by the learned single Judge of this court dated 7.11.1996 made in W.P.Nos.2900, 2902, 8498 and 2901 of 1987 is under challenge in all the above writ appeals respectively.

9. The legality involved regarding the facts extracted supra since being relevant for consideration for a valid decision to be arrived at in this regard so as to decide whether the appellants insurance companies are liable to pay contribution under The Tamil Nadu Labour Welfare Fund Act, 1972, is crucial and therefore it is relevant to focus attention for the legality which pertains to the point for consideration.

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10. To put it in a nutshell it would be argued on the part of the appellants that they are registered companies under the Indian Insurance Companies Act, 1956 and subsidiaries of the General Insurance Corporation of India formed in pursuance of Section 9 of the General Insurance Business Nationalization Act, 1972 under which the Union of India has framed schemes for running the business of the Government under Section 16 of Act, which have the force of

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law; that they are the creation of the Central Government and fully held and controlled by the Central Government and therefore they would come under the purview of the term 'State' under Article 12 of the Constitution of India and establishment of the Central Government and therefore the provisions of The Tamil Nadu Labour Welfare Fund Act, 1972 has no application to the appellants herein.

11. It would further be argued on the part of the appellants that the said insurance is referable to Entry 47 of List I of VII Schedule; that the entry of business carried on by them to insure the life, insurers' safety and welfare of the insured; that The Tamil Nadu Labour Welfare Fund Act, 1972 has been enacted for promoting the welfare of the labour in the State of Tamil Nadu and it is referable to Entry XXIV List VII (concurrent list of Schedule VII under the head of Labour Welfare); that neither Section 2 (d) of The Tamil Nadu Labour Welfare Fund Act, 1972 nor any of the sub sections speaks of any company which is a legal entity in the eye of law; that there is no Notification of the Government including the insurance companies as establishments under Section 2(d)(vi) of The Tamil Nadu Labour Welfare Fund Act, 1972 and therefore the provisions of this Act are not applicable to the appellants herein; that the contra finding of the learned single Judge opposed to settle the principles of law and on such arguments the appellants would ultimately pray to allow the writ appeals setting aside the common order of the learned single Judge.

12. On the contrary on the part of the respondent it would be argued to the effect that the appellants establishments are the category of establishments under the control of the Central Government that Section 2(d)(v) of The Tamil Nadu Labour Welfare Fund Act, 1972 excludes an establishment of Central or State Government; that this Court has taken the view that the Nationalized Banks are the establishments under the Central Government within the provisions of the Tamil Nadu Labour Welfare Fund Act, 1972, the exclusion is only regarding an establishment of the Central Government or State Government and it does not include an establishment under the Central Government; that the Act would not apply under the Shops and Establishments Act, 1947; that in the case reported in The State Electricity Board vs.

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Govindarajulu (AIR 1960 Madras 571), wherein this Court has already decided that the Electricity Board even though is a legal person in the eye of law and a body would be distinct and different and cannot avail of the extended provisions of limitation provided under Article 149 of the Limitation Act, 1908 and therefore the appellants would fall within the purview of The Tamil Nadu Labour Welfare Fund Act, 1972, and so long as the appellants have not obtained any exemption under Section 40 of The Tamil Nadu Labour Welfare Fund Act, 1972 and therefore the appellants are bound to contribute in accordance with the provisions of the Tamil Nadu Labour Welfare Fund Act, 1972.

13. A careful perusal of the order of the learned single Judge would show that the learned Judge has not only traced the facts and law as pleaded in the writ petitions and in the counter filed by the other side but also having extracted the Section 16(1) (c) (d) of the Tamil Nadu Labour Welfare Fund Act, 1972, and having a combined reading of Section 4(2), 4(4) 10 and 16 of the Tamil Nadu Labour Welfare Fund Act, 1972 would find that the Government is given the power to transfer shares or to any person or frame the scheme and issue the allotment of shares to any person; that under Section 16(1)(d), the Board of management can be constituted under the Scheme and would also go through the other relevant provisions of law, such as Sections 4(2) 4(4), 10 and Section 9, 16, 22, 23 and 31 of the Tamil Nadu Labour Welfare Fund Act, 1972. The learned single Judge would also extract and appreciate the judgment cited by the counsel for the appellants before it, numbering six and giving a patient hearing and having held its own discussions on the question whether the Nationalized Banks acquire under the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970 the status of being the establishment under the Central Government, the learned single Judge would find that it had been considered in various judgments by the courts and would find ultimately the learned Judges concluding that the Nationalized Banks were establishments under the Government, even though they were not wings of Government. But in this case, the argument is that the Insurance Companies are wings of the Government. But a reading of the provisions of the General Insurance Business (Nationalization Act,1972)that does not lead to the said conclusion. The exemption under the

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Tamil Nadu Labour Welfare Fund Act, 1972 is an establishment of the Central Government.

14. The learned single Judge having found the above discussions made by the learned Judges of the upper forums in their different decisions and in further consideration of the other judgments it would ultimately be remarked by the learned single Judge that the Honourable Apex Court in consideration of the judgment reported in S.R.Rajamohanan Vs. General Manager and others (1985 LAB IC NOC 17); Jayahasta vs. Khalaid Mujib (AIR 1981 Supreme Court 687) and L.I.C. Vs. Escorts Ltd., (1986 (I) S.C.C. 264), wherein it would ultimately be held that the institutions in question are only having authority for the purpose of Article 12 of the Constitution of India and it cannot be construed to be so for all purposes. In consideration of all those judgments particularly that of the Hon'ble Apex Court, the learned single Judge would ultimately remark after considering all the relevant facts and circumstances of the case and the decisions cited by the counsel for the appellants and the respondent, that it is of the view that the Insurance Companies are not establishments of the Central Government and hence they are liable to pay contribution under the Tamil Nadu Labour Welfare Fund Act, 1972. For the foregoing reasons, the learned single Judge would ultimately dismiss the writ petitions filed by all the above appellants with costs as per its judgment dated 7.11.1996.

15. The learned single Judge either in his approach or appreciation of the materials made available has not committed any error of law or perversity in his approach in accepting the case of the respondent so as to dismiss the writ petitions filed by the appellants herein nor is this Court able to see any other legal infirmity or inconsistency in the common order passed by the learned single Judge and therefore this Court, while assessing the same whether it is concerned with the conclusions arrived at by the learned single Judge in dismissing the writ petitions or the manner in which the said conclusions have been arrived at nothing erroneous could be seen nor found and therefore the interference of this court sought to be made in such a well considered and merited common order passed by the learned single Judge in the above manner is neither necessary nor warranted and the only course left with for this Court in the circumstances of the case is to

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dismiss all the above writ appeals as without merit and the same is ordered accordingly.

In result,

(i) All the above W.A.Nos.750 to 753 of 1998 do not merit acceptance and they are liable to be dismissed and are dismissed accordingly;

(ii) the common order passed by the learned single Judge of this Court in W.P.Nos.2900,2902, 8498 and 2901 of 1987 dated 7.11.1996 is hereby confirmed;

(iii) Consequently, all the connected W.M.P.Nos.7846 to 7849 of 1998 are also dismissed;

(iv) There shall be no order as to costs.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

ssa/ks

Copy to:
The Secretary,
Tamil Nadu Labour Welfare Board,
DMS Compound,
Madras-6.
+4cc to M/S Aiyar and Dolia, Advocate, SR.No.2278

KS(CO)
kaa 28.02.05

Pre delivery common order in
W.A.Nos.750 to 753 of 1998
20.1.2005

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